

Remarks

In the non-final Office Action dated July 31, 2009, the following new grounds of rejection are presented: claims 1-16 stand rejected under 35 U.S.C. § 112(1); claims 1-16 stand rejected under U.S.C. § 112(2); claims 1-8 and 10-16 stand rejected under 35 U.S.C. § 102(e) over Joseph (U.S. Patent No. 6,993,645); claim 9 stands rejected under 35 U.S.C. § 103(a) over the '645 reference in view of Perlman (U.S. Patent No. 7,200,859). Applicant traverses all of the rejections and, unless explicitly stated by the Applicant, does not acquiesce to any objection, rejection or averment made in the Office Action.

Applicant respectfully submits that the Office Action relies upon a fundamental misunderstanding of the technology. For instance, several of the rejections rely upon the unsupported conclusion that certain actions cannot be performed during booting. This conclusion is not supported as Applicant's specification teaches various actions are performed during booting. As there is no evidence for this conclusion in the record (nor is there a supporting technical explanation) the only evidence of record supports that the identified actions can be performed during booting. As such, Applicant requests that the rejections which rely upon this erroneous conclusion be withdrawn.

Applicant respectfully traverses the rejection under 35 U.S.C. § 112(1) because the rejection is based upon an erroneous conclusion and because there is sufficient support in the present application. The basis for the rejection rests upon an unsupported conclusion that "a device has to be booted before any data can be played on it." Yet, the Office Action asserts that playing of data before booting is taught by the cited references (e.g., in the rejection under 35 U.S.C. § 102(e)). Notwithstanding this apparent contradiction, Applicant does not understand the reasoning behind the conclusion of the Office Action. The Office Action fails to present any technical explanation or evidence for the conclusion. Accordingly, Applicant submits that there is not a sufficient basis for a *prima facie* rejection under 35 U.S.C. § 112(1) and Applicant requests that it be withdrawn.

In an effort to facilitate prosecution, Applicant directs the Examiner to Applicant's specification (e.g., the discussion beginning at page 4 and further supported at page 6:21-23), which provides several examples of accessing data during booting.

Applicant submits that the skilled artisan would readily understand that this is indeed possible. For at least these reasons, Applicant requests that the rejection be withdrawn.

Applicant respectfully traverses the rejections under 35 U.S.C. § 112(2), which are similar to previously overcome rejections (see Office Actions of September 22, 2008 and January 27, 2009). The rejections are again based upon an inability to understand the technology rather than any identifiable aspect of the claim terms that is indefinite. As the Office Action does not address Applicant's previously presented arguments, which were already deemed sufficient, the rejections are *prima facie* invalid. Moreover, the Office Action appears to present a conclusion that it is not possible to boot a computer and play content at the same time. This, however, is not a proper basis for a rejection under 35 U.S.C. § 112(2) because the Office Action has never articulated a reason why the language is indefinite (*i.e.*, lack of technical understanding alone does not render a claim term invalid). Applicant is unaware of any support for the Office Action's assertion that failure to understand how something works renders claims indefinite. For instance, M.P.E.P. § 2173.05 (a-v) present a thorough list of example 112(2) considerations, none of which appear to support such an assertion.

Thus, despite an apparent misunderstanding of the technical details on how to implement a system that corresponds to the claim limitations, a rejection under 112(2) is improper. Moreover, the Office Action provides a clear and definite interpretation of the claim scope when presenting the 112(2) rejection. Notwithstanding, Applicant notes that an explanation of how to implement embodiments for displaying media content while booting is provided in Applicant's specification (*see, e.g.*, FIG. 2 and Page 4 *et seq.*).

Moreover, the Office Action's assertion that data cannot be downloaded unless a device has finished initializing is irrelevant as the claims do not mention initialization. Applicant surmises that the Office Action might have meant to refer to booting; regardless, the claim language is clear and definite. Moreover, the skilled artisan would readily understand that there are many mechanisms that can be used to implement parallel processing. As an example, Applicant's specification explains that "program memory 212 contains...a program PU (or a set of programs) for implementing the processes P1, P2, and P3 described above." Page 6:21-23. Thus, one mechanism involves the use of a program for implementing each of the processes in parallel.

Moreover, as correctly noted by the Examiner, the skilled artisan would also recognize that many systems can be implemented using multiple processors and/or using processors designed for parallel processing.

With specific regards to the 35 U.S.C. § 112(2) rejection of claim 2, Applicant submits that the rejection is based upon limitations that are not present in the claims. For instance, claim 2 does not require that a user requests anything. Thus, whether or not a device “is supposed to finishing booting before on can access it,” is not relevant to the claim limitations. Moreover, the Office Action has presented neither evidence nor technical reasoning in support of the conclusion regarding what is “supposed to” happen in a device. As such, there is no evidence in the record to support the Office Action’s conclusion.

For at least these reasons, Applicant submits that the rejection under 35 U.S.C. § 112(2) rejections are improper and requests that they be withdrawn.

Applicant respectfully traverses the rejection under 35 U.S.C. § 102(e) over the ‘645 reference for failing to teach correspondence to each limitation. With particular regards to claim 1, the ‘645 reference does not teach a receive module for receiving, from a third-party device, multimedia content via said network, where the module is implemented in parallel with a boot module. The identified flash ROM is not a third party device. Moreover, there is not a receive module that (in parallel with the boot module) accesses data from this flash ROM via the identified network interface 26.

With particular regards to claim 5, the ‘645 reference does not teach parallel implementation of booting and receiving multimedia content from a third-party via a network. Network interface 26 is not taught to be used to access multimedia content in parallel to booting the device.

The above-mentioned deficiencies are further illuminated by the Office Action’s attempts at showing correspondence to various dependent claim limitations. Applicant does not address each of these additional deficiencies in detail but notes that various aspects of the cited references have not been shown to occur during/in parallel with booting.

Applicant respectfully traverses the rejection under 35 U.S.C. § 103(a) for lack of correspondence. The rejection is improper for the reasons presented above in connection

with the rejection under 35 U.S.C. § 102(e) and the modification in view of the '859 reference does not cure this deficiency. Applicant respectfully requests that the rejection be withdrawn.

In view of the remarks above, Applicant believes that each of the rejections/objections has been overcome and the application is in condition for allowance. Should there be any remaining issues that could be readily addressed over the telephone, the Examiner is asked to contact the agent overseeing the application file, Juergen Krause-Polstorff of NXP Corporation at (408) 474-9062.

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